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Book Reviews and Notes

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BOOK REVIEWS AND NOTES.

DIE SCHUTZOBJEKTE DER VERBRECHEN, SPEZIELL UNTERSUCHT AN DEN VERBRECHEN GEGEN DEN EINZELNEN. Von *Dr. jur. Max Harschberg*. Breslau: 1910, Schletter'sche Buchhandlung. Pp. 160.

The author himself confesses that he began this "constructively dogmatic" study confident that people were now sufficiently clear about the "Schutzobjekt" of crime to feel the need of an examination of individual legal rights, which had hitherto been completely lacking. This confidence-proving to be without foundation, he could not resolve to interpret the nature of the "Schutzobjekt" in every particular in the same way that Oppenheim and most of the other theorists have done. He therefore endeavored, by making extremely careful use of the results obtained till then, to build up the theory of the "Schutzobjekt" from the beginning and thus became convinced that the setting up of the problem as a constructive one will form an essentially new and certain basis. We are not prepared to assert that the author has succeeded in definitely solving the difficult question—nor does he himself so maintain—but he is certainly to be congratulated on his remarkably keen logic and his unusual command of the subject.

A. A.

DIE POLIZEI. By *Dr. Gerhard Anschütz*. Leipzig: B. G. Teubner, 1910. Pp. 25.

In this paper read at the Gehe Stiftung in Dresden on February 12, 1910, Dr. Gerhard Anschütz, professor of public law in the University of Berlin, has outlined very clearly the meaning of the word police. In Greece and Rome it was used as a synonym of state. In the Middle Ages it included all the activities of the state. At the beginning of the seventeenth century, foreign affairs, military affairs, financial affairs and the administration of justice were, in the order mentioned, differentiated and separated from the realm of police administration. Not until the eighteenth century, however, was the concept of the police power changed from the activities of the state for the promotion of the public welfare to its activities for the protection of the public safety. This is the modern meaning of the word police.

Professor Anschütz has also given an excellent outline of the police power in Germany at the present day. The police power cannot encroach upon the domain of judicial affairs; the police cannot interfere in civil cases; the police power cannot encroach upon the domain of financial affairs; the police cannot use their licensing power as a means of levying taxes. The police power to-day cannot be used for the promotion of the public welfare as by ordering the construction of buildings, but it may be employed for the protection of the public safety by regulating the manner in which buildings must be constructed. The police protects the state against crime; it protects the safety of the state by its control over strangers, the press, etc.; it protects the in-

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dividual by its control over buildings, health, fire, etc., and it maintains the public order necessary for community life by forbidding whatever offends against public opinion with reference to the maintenance of morality.

Although the police authorities do not always use force, they always have the right to use force. They may at their option use force against any person who causes a violation of police regulations or against the owner of the property which violates the police regulations. If neither the cause of the violation nor the owner of the property can be ascertained the police may remove the violation themselves. Under no circumstances may the police, however, interfere with a third person in removing a violation; the police cannot compel the owner of property to permit the owner of adjacent property to draw upon his land stagnant water which is a menace to health.

The exercise of the police power in Germany differs to some extent from the exercise of the same power in America. Professor Anschutz's exposition of the police power in Germany brings out very clearly these points of resemblance and points of difference. He emphasizes also that the days of the police state in which the powers of the police were unlimited are passed in Germany. The jurisdiction of the police and the manner in which the police may act are to-day regulated by law, and the German police authorities may act only when permitted to do so by statute or common law. The principle that they may act in all cases in which they are not forbidden to act does not seem to be accepted in Germany.

New York City.

LEONHARD FELIX FULD.

REPORT OF THE COMMISSION TO INVESTIGATE THE QUESTION OF THE INCREASE OF CRIMINALS, MENTAL DEFECTIVES, EPILEPTICS AND DEGENERATES. Boston, January, 1911. Pp. 50.

The report of this commission, created by the Commonwealth of Massachusetts, is a studiously well-balanced document. The general conclusions are that with regard to crime, "Caution is necessary in drawing conclusive deductions from the evidence obtainable." This same attitude is shown also with regard to the study of insanity, feeble-mindedness and epilepsy. All through, it is carefully stated that an increase of individuals under care and treatment does not necessarily mean that there is any increase in the proportion to the population. In fact, the commission definitely declines to make any deductions from data which are available in regard to increase or decrease in proportionate percentages.

Great stress is laid upon the relationship of mental defect and mental disease to criminality. Particularly, it draws attention to the class of cases "where mental and intellectual defect is not so obvious and is overshadowed by the immoral and criminal tendencies." However, the defect of mental make-up in these cases is incurable and permanent. The term feeble-minded does not sufficiently designate them. On the other hand, "the legal definition and precedents relating to ordinary cases of feeble-mindedness are ineffective and inadequate for this purpose." This special class of defective criminals has received various

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names, but the commission thinks that the combination of slight mental defect with criminal propensity is well expressed by the term defective delinquent. Under present conditions this class is specially predatory in the community.

Various recommendations are conservatively offered by the commission. Among them we note extension of the policy of custodial care of the mentally abnormal group, prohibition of marriage of defectives, recidivists *et al.*, further observation of the results of asexualization, education of the young in sex hygiene, provision for the separate care of defective delinquents, more attention to the prevention of juvenile crime, and organized research on the subject of causation.

Chicago.

WILLIAM HEALY.

DIE NEUEN HORIZONTE IM STRAFRECHT. DARSTELLUNG UND KRITIK.
By Dr. X. Gretener. Leipzig: Wilhelm Engelmann, 1909. Pp. VII, 163.

This book constitutes one of a series of critical essays upon the general reform of the criminal law now being undertaken in Germany. Dr. Gretener approaches the subject mainly along philosophic lines and discusses the various theories of punishment and correction advanced during the past three decades both in his own country and elsewhere. He seems generally in favor of the view that the legislature should consciously adopt some particular standard in respect of the punishment of crime, whether it be retribution, prevention by example, improvement of the criminal, or protection to society by neutralizing criminal propensities. When once the proper theory is arrived at, it will then be rendered practical throughout the various branches of criminal legislation. In this, he follows the doctrines of Birkmeyer and is opposed to the theory of Kahl, who relegates general theory to science, which legislation may sometimes heed but not without modification according to the practical requirements of each specific problem.

The book is divided into eight sections. In the first two sections the author considers the relation of determinism to the concept of criminal responsibility. Here we have a direct conflict between the authorities who consider each individual responsible for the acts growing out of the nature of his own personality, irrespective of the limitations upon its development for which he was in no way responsible; and those of the school of Merkel who recognize that in many instances, an individual has acted because he could not have acted otherwise in view of the impulses implicit in his own nature.

In section 3, the author considers the causes of crime and methods of combatting them through a proper system of criminology to which the state shall give recognition. In this branch of the science, as Liszt has properly pointed out, the first consideration is to be given to society rather than to the individual, who, even though through no fault of his own, commits an act against its welfare. In reconciling the demands of individual improvement with those of social protection, there has grown up a so-called "third" school, favored particularly by Italian authorities, the general trend of which the author describes in section 4, and

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which demands general social reform as part of the campaign against crime.

A new criterion of criminality will be developed, maintains the author, only after scientific methods of observation and experiment have been introduced in the domain of crime and its punishment. The old classic views will gradually give away to conclusions drawn from modern scientific methods.

The author has covered a great number of authorities on the subject of which he treats. He devotes particular attention to the doctrines of the school of the "new horizon" in Germany and contrasts it with the school of the "positivists" of which Ferri in Italy is the main example.

The discussion is highly technical and occasionally somewhat involved and it is sometimes difficult to determine which of the various theories are most favored by the author himself. The reader emerges from the book with an enlarged view of the various systems developed by modern criminal science but with no very definite ideas of the superiority or advantages of any one of them.

New York City.

ARTHUR K. KUHN.

MODERN THEORIES OF CRIMINALITY. By *C. Bernaldo de Quirós*. Translated from the Spanish by Alfonso de Salvio, Ph.D. With an Introduction by Wm. W. Smithers. Boston: Little, Brown & Co., 1911. Pp. XXVII, 249.

When the American Institute of Criminal Law and Criminology was organized in Chicago, in June, 1909, the following resolution was passed:

"WHEREAS, It is exceedingly desirable that important treatises on criminology in foreign languages be made readily accessible in the English language.

"Resolved, That the president appoint a committee of five with power to select such treatises as in their judgment should be translated, and to arrange for their publication."

The "committee on translations" appointed under this resolution has arranged with Little, Brown & Co. of Boston for the publication of such a series of translations which has been named the "Modern Criminal Science Series."

It is fitting that the first book in this series is the one we are now reviewing, for it gives a more or less comprehensive survey of modern criminological theories. In his introduction Mr. Smithers tells of the other writings of the author and says that Senor de Quirós is generally accepted as "the leading Spanish writer on criminology."

The book consists in the main of two long chapters. The first is entitled "Criminology" and deals with modern theories as to the nature and causes of crime. The second is entitled "Criminal Law—Penitentiary Science," which deals with modern theories as to the treatment of crime and the criminal. In the English version a shorter third chapter has been added on the "Scientific Investigation of Crime."

De Quirós traces the modern science of criminology back to three sources, (1) the occult sciences, such as physiognomy and phrenology

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which flourished in the eighteenth century and the first part of the nineteenth, (2) psychiatry and (3) the science of statistics. The occult scientists studied the peculiarities of the human anatomy and were the precursors of the criminal anthropologists. The psychiatrists formulated some of the earliest theories of criminality, such as that the criminal is a degenerate and a moral imbecile. The statisticians showed the effect upon crime of the seasons and of climate. Then he states briefly the theories of the writers whom he calls "the three innovators," namely, Lombroso, Ferri and Garofalo. Having described thus the rise of the science, he classifies the many theories as to the nature and causes of crime which have been proposed. The main classification is that of anthropological theories and sociological theories. Under anthropological theories are atavistic theories, theories of degeneration and pathological theories such as epilepsy, neurasthenia, etc. Under sociological theories are anthropo-sociological theories, social theories such as failure in adaptation, segregation, parasitism, etc., and socialistic theories. In the latter part of this chapter he describes the proceedings of the fifth and sixth international congresses of criminal anthropology and discusses the criminological literature which has been produced in Spain and Spanish America.

The first part of the second chapter traces the origin and evolution of modern theories of criminal law beginning with Beccaria, the founder of the classical school, and of penitentiary science beginning with John Howard. But most of the chapter is devoted to a description of recent changes in the treatment of the criminal such as the indeterminate sentence, probation, the juvenile court, reformatories, etc. The author shows that he stands with the most progressive of the reformers by advocating that imprisonment be replaced in as many cases as possible by reparation to the victim of crime by the criminal. The latter part of this chapter also is devoted to a discussion of criminal law and penitentiary science in Spain and Spanish America.

The third chapter discusses the identification of criminals by means of anthropometry, dactyloscopy, the word portrait, etc., the search for the evidences of crime and the value of testimony as evidence.

This book has no special value for those who are well acquainted with the literature of criminology, because it contains nothing original. Its principal utility will be for those who are quite unacquainted with this literature, for whom it furnishes a fairly readable survey of most of the recent theories with respect to the nature and treatment of criminality. Its principal defect is that it states all of these theories in an exceedingly superficial way. It would have been better if some of the principal theories could have been stated more fully and analyzed more thoroughly. On account of its superficiality the reading of this book should be supplemented with the reading of more intensive works on criminology.

MAURICE PARMELER.

University of Missouri.

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ZUR VERSTÄNDIGUNG ÜBER DIE JUSTIZREFORM. Von *Dr. Franz Adickes*, Oberbürgermeister in Frankfurt a. M., Mitglied des Herrenhauses. Berlin: J. Guttentag, 1907. Pp. 124.

Judicial reform of one sort or another has been the theme of numerous books and pamphlets, published in Germany during the last few years. For the most part, their authors have been content to attack one or two points of the judicial structure. But now comes Dr. Adickes, who unlimbers his guns and delivers a thundering broadside that rakes the whole field. Not only do the organization and procedure of the courts need tinkering, but, according to Dr. Adickes, they need to be built over. Much of Dr. Adickes' little book possesses small value for the average American reader, but it is interesting to note that his vigorous attack is directed toward evils which have been felt in other quarters than Germany. Antique methods and ancient forms still persist long after their usefulness has vanished, and what has, in years gone by, proven efficient, now serves to hinder and clog the administration of justice. German procedure is made slow and, for that reason, more or less ineffective because of a vast amount of written matter required where it is not really needed, and by the omission of oral inquisition where it is needed. Preliminary hearings might be simplified and the number of judges measurably lessened. The reform in procedure, according to Dr. Adickes, carries with it also a rational division of labor, whereby the immense pressure resting upon the bench may be relieved by transferring to the bar a large part of the labor now required to be performed by the judiciary. Moreover, by reorganizing the court of first instance and by enlarging its competence, the court will be rendered more popular. Dr. Adickes advocates a reconstruction of the higher courts and a reduction in the number of judges employed. While he does not urge the sudden application of some of the innovations he suggests, yet he pleads for at least a beginning in the right direction. The little volume, which is one of several from the pen of the same author, is written in a clear, luminous style and in a convincing manner.

BURT ESTES HOWARD.

Leland Stanford University.

BEGRIFF UND GRENZEN DER KRIMINALSTATISTIK. EINE LOGISCHE UNTERSUCHUNG. By *Dr. Rudolf Wassermann*. Leipzig: Verlag von Wilhelm Englemann, 1909. Pp. VIII, 112, M-4.

This book is the eighth of the critical contributions to criminal law reform which have been published under the direction of Professor Birkmeyer of Munich and Professor Nagler of Basel. These two professors are attempting, by means of timely publications, to place before the public the views of the so-called classical school of criminal law.

In his introduction, Dr. Wassermann indicates in a general way the nature of the book. It is, we are told, to be not merely a logical analysis of criminal statistics, but an application of the well-known results of logic to this special field of the social sciences. It is easy to imagine what unlimited possibilities for a German lie in a subject of this kind. Fortunately for his American readers, at least, he has seen fit to confine his discussion to about one hundred pages.

The first chapter is given over to a survey of the method of the natural sciences versus the historical method. The reason for devoting space to this subject is brought out in later chapters. His thought is evidently to impress on the reader that the historical method is the one which tells of the individual thing, while the method of the natural sciences places the individual thing under a general concept and allows it to sink into insignificance.

The second chapter is controversial in the extreme. The impossibility of Liszt's law of development is the thesis. To Liszt's question, "Are we able to discern in the *Is* the *Becoming*?" he gives a negative answer ("—das Seinsollende niemals aus dem "Werenden" abgeleitet kann"). It is not necessary for the purpose of this review to trace the steps by which he has arrived at this important conclusion. But if he has really proven Liszt to be wrong (a thing which I am not prepared to say), he has in doing this set up a limitation in the use of statistics in general and criminal statistics in particular.

The third chapter is by far the longest and the most important of them all. It bears the heading, "Concept and limits of the science of crime as a relatively individual phenomenon." It might with good reason be entitled, "Theory of Statistics," since it is a discussion of the extent to which the individual thing figures in statistics. Statistics is for him the science of the relatively individual, and criminal statistics the science of the relatively individual in its criminal activity. Statistics does not serve itself with the method of the natural sciences. If it did, of course, it would not be a science of the relatively individual but of the universal. Such is also the case with the science, criminal statistics. Absolute individuality is lost sight of, nevertheless the science uses the historical method, not the method of the natural sciences. The average character of a given group or the individuality of a species is thus obtained. It is not, however, possible to discover the causes of phenomena through a knowledge of the relatively individual. "Die Statistik kann uns nicht zeigen, nach welchen Gesetzen die verbrecherische Betätigung der Menschen verläuft. Sie gibt uns nur die Mittel zu einer Wahrscheinlichkeitsberechnung à posteriori." The absolute individual must be studied in order to get track of causes. "Zerlegungsgrenze ist die Gruppe, denn bis zur Untersuchung der Einzelfälle kann die Statistik nicht zurückgehen." We see here again the thought cropping up that has appeared in the two previous chapters; viz., that it is only by means of the pure historical method, which handles individual things, that we can understand individual crimes.

The fourth chapter considers criminal statistics, the statistical method and criminal sociology. He begins, however, by taking up the question of statistics as a science and statistics as a method. His position in this matter is the usual German one that statistics is a method. While admitting that there is a statistical method, they have, however, nothing to do with each other. The statistical method is the tool of conceptual sciences, statistics is a science of reality. The first is nomological, the second is ontological. There are two ways, it appears, of regarding the relatively individual with reference to its criminal

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activity. The science of criminal statistics is the historical way, criminal sociology the way of the natural sciences.

The fifth and last chapter deals with criminal statistics in its (for criminal statistics is a science, we must remember, and therefore singular) relation to the reform of criminal law. As already stated, criminal statistics is not able to inform us concerning the causes which have led to criminality. It is a "beschreibende Wissenschaft." But it can, in a general way and to some slight extent, indicate the circumstances which accompany criminality. Yet here great care should be taken not to mistake accompanying circumstances for casual circumstances. His final thought, which seems to be a fling at the sociological school, is that punishment is requital, though other purposes may be included in it, such as the protection of society.

The volume is characterized throughout by numerous quotations which have been introduced into the text on every conceivable occasion. There is, of course, a certain danger in this, as a chance phrase or sentence may give no clue to a man's real opinion. To many Americans the book will, no doubt, seem too theoretical. Yet it is, I believe, through just this everlasting criticism of method that the Germans have attained the high position which they have come to occupy in the world of science.

LOUIS N. ROBINSON.

Swarthmore, Penn.

DAS STRAFVERFAHREN GEGEN JUGENDLICHE. EINE KRITISCHE STUDIE.
Von Professor Dr. Friedrich Oetker in Würzburg. Stuttgart:
Ferdinand Enke, 1909. Pp. 52.

The American reader, who is willing to battle with the difficult style of Oetker, will find this pamphlet of special interest because, instead of being a simple enumeration of conditions as found, particularly in this country, the author has undertaken a critical study of our methods of administering juvenile court affairs. It is well sometimes to see ourselves as others see us when they are in a critical attitude.

The first part of this pamphlet is taken up by a consideration of the projected changes in juvenile court procedure in Germany. A number of other writers have offered their views on this subject in pamphlets recently, and it is merely necessary to say that those interested in this particular subject can find suggestive material in Oetker's study. It is with the latter half of the book, which deals with American juvenile courts, that we are especially concerned. Oetker pays much attention to the fact that our heads of juvenile courts stand in combined relationship of guardian and criminal judge. This gives the procedure before him an inquisitorial form, which this author thinks is open to much objection, especially since punishable offenses are not only those which directly violate criminal laws, but include also actions which merely demonstrate a tendency toward a criminal career. Under the projected German juvenile court system the author states that the judge is to recognize the distinction between his powers as guardian and his authority as judge with powers of punishment. The experience of American courts in this matter teaches a lesson; under this method criminal procedure loses its independence in becoming a branch of the adminis-

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trative process, the legal process surrounding the right to punish gives place to an inquisitorial procedure following the pattern of the principles of guardianship.

The author objects to our juvenile court procedure in another respect; namely, that the process is not based upon complaints which are made under the restrictions of ordinary legal methods. The case is also handled in too summary a fashion. He mentions the fact that sometimes eight or ten cases are sometimes disposed of in an hour, and the impression which many observers have carried away from our courts is that all of the vital facts in regard to the case have not been brought out. The powers given to probation officers also come in for a certain measure of disapprobation. According to Oetker this official has too much authority, often having powers extending from the right of arrest to judgment as to what ought to be done in the case.

As the result of the many possibilities open for the disposal of the case, our judges attend very largely to the possibilities of educating the offender out of his evil tendencies. Loving regard for the welfare of the young delinquent, Oetker says, is, of course, a duty, but with the complete renunciation of the idea of punishment it comes about that the delinquent act itself is really rewarded, and opportunities for the young thief are opened which are entirely denied to his fellows who remain in the paths of virtue.

In great contrast to this weakness of treatment of the young criminal is, in American courts, the entirely too strenuous procedure against the parents. Many mild acts may be regarded as delinquent, even the smoking of a cigarette on the street, and to punish the parents on account of presumptive lack of duty for the child's offenses involves a hardship which often goes as far as direct injustice. Oetker asks whether, in our freedom-loving country, we should care to have such items of procedure carried into the courts for adults. He finally says that confusion between punishment and education, which occurs in the American juvenile laws, is to be vigorously combated.

The reviewer feels convinced that several of the points made by Oetker are not well taken; for instance, the wrongfulness of full inquisitorial powers when, as acknowledged, the general idea of the juvenile court is towards reformatory education rather than towards retributive punishment. However, these counter-criticisms are fairly obvious to those thoroughly familiar with our juvenile court system and, perhaps, polemics need not be here wasted.

Chicago.

WILLIAM HEALY.

GESAMMELTE KRIMINALISTISCHE AUFSATZE. Von *Dr. Hans Gross*, Professor des Strafrechts an der Universität Graz. Leipzig: F. C. W. Vogel, vol. I, 1902, pp. VIII, 430; vol. II, 1908, pp. 378.

The two volumes contain not fewer than 211 longer and shorter essays of this most important representative of the psychological tendency of the "Young German" school of criminology, most of which appeared in the "Archiv für Kriminalanthropologie und Kriminalistik" which he publishes. It seems to be particularly appropriate to call at-

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tention to them at this time just after the publication of his "Criminal Psychology" in the "Modern Criminal Science Series." Many of the essays appear to be preparatory or supplementary studies to this, his chief work, but the volume also contains unusually valuable contributions to criminal policy and penal law reform, of which the following are a few: Capital punishment and anarchists, professional secrecy, confinement to the house as a penalty, degeneration and deportation, the question of protection against slander, fines, the training of the practical jurist, museums of applied criminology, etc.

It is, of course, impossible to enter more fully into these various subjects here, and moreover we are chiefly concerned just now with making clear from what standpoint Professor Gross regards the law and the whole administration of justice. He starts theoretically from the motive of self-preservation in man, egoism and, quite logically, is unable to see anything else in law, morality, ethics but the repression and restraint of egoism which always proceeds in a casual manner: I take something *because* I need it—whereas law, ethics and morality really always require action that does not rest on a casual basis: you must not take it *although* you need it—from which already Nietzsche deduced the false causality of ethics and morality and on which all the complaints of the "brutality of the law" are based. As conditions are to-day, however, we must assume two kinds of egoism: "egoism of the individual, which everyone has and must have if he is not to perish and which, as proper egoism, harms no one, but, as improper egoism, encroaches upon the rights of the fellow-man; and collective egoism, the egoism of the mass, which does not exist as such but is only recognized as necessary by the prudent and which must exist if the mass is not to perish." This perception leads of itself to Gross's definition of crime and punishment: "*crime*, the expression of individual egoism that harms collective egoism to such an extent that legal regulation has resulted," and: "*punishment*, the authoritatively regulated check that restrains the egoism of the individual for the benefit of collective egoism." This definition of punishment is particularly valuable because it also implies that the idea of punishment is not fixed, but that it changes, that it develops, as collective egoism develops, into something wider and higher. Feuerbach's saying, "Nullum crimen, nulla poena sine lege," only a century old, but that seems to us to have come down from pre-historic times, is to-day considered indispensable and absolutely true. But if we look at it more carefully we must acknowledge that also this "truth" will perhaps not stand forever. "Constantly to-day in our administration of justice we come upon contradictions, obvious injustices, insoluble problems, when we have to say to ourselves: the law could not anticipate every case; not every evil deed has its section. It is significant enough that one of the most important reasons that was advanced in favor of trial by jury was the hope that in certain cases the jury would go beyond the law and thus prevent obviously unjust judgments. If we look at the matter without prejudice we can imagine in the distant future a penal code without sections. "But to-day the section must exist because the criminal law is the criminal's *magna charta libertatum*; he, too, must be protected

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against the supremacy of society and be able to say, "Thus far and no farther. What is not punishable I may do." But that the conditions are ideal that make it necessary for the criminal to defend himself against the majority that stands for order in society and against the judges that represent it, no one will assert." Thus if we think of an ideal future without law sections, we must also imagine ideal judges who decide according to the law, without compulsion and hampering limitations, as the circumstances demand. They will judge from the two following standpoints: "*objectively*, with the proper insight into the social and economic situation, what menaces and is harmful to the conditions existing at the time—and, *subjectively*: how the accused is to be judged psychologically according to his individuality and the act." "Psychological valuation will thus be the basis of all law, and this valuation is already to-day one of humanity's greatest tasks." People have also come to recognize it as such, and the reform of all penal codes at present undoubtedly aims first at *seeking the psychological momentum* in the separate crimes and then at ascertaining the idea of what punishment will suffice successfully to oppose the impulse to crime, where the reaction is normal.

That the psychological valuation cannot be undertaken immediately has of course been recognized by the prudent. First of all material has to be collected. "As long as the causes of crime in general and of separate crimes in particular are not known, the most important task is the ætiology of crime." In other disciplines the comprehension of the causes of a phenomenon means as a rule the end of the task; in this case the real purpose of the work, a healthy, psychologically grounded policy towards the criminal, will only begin then and all endeavors must be subordinate to the one aim: "a criminal policy based on rightly understood criminal ætiology." On the basis of the doctrine of the phenomena of crime, that must be studied in all its seemingly unimportant details, the corresponding inner momentum for every external must be sought for and ascertained; that is, every phenomenon or part of a phenomenon must be psychologically studied." "Hence the most important and the final task of the criminologist is the psychological dissection of the criminal act." This work is organized and systematized in Professor Gross's "Criminal Psychology."

South Easton, Mass.

ADALBERT ALBRECHT.

CHEMIE UND PHOTOGRAPHIE BEI KRIMINALFORSCHUNGEN. Second Series. Von Dr. Loock. Dusseldorf: Fr. Dietz, -1910. Pp. 164.

This book consists principally of a collection of cases which have come under the author's own observation, and which are described in great detail from the point of view of the scientific expert.

Great emphasis is placed upon the importance of having photographic reproductions of the scenes and detailed exhibits of crimes, and in the preface the author properly points out the necessity of having such objects photographed before they have been disturbed, since points regarding their condition and relative position often arise later in the investigation, which may have been overlooked at the time of the first discovery. He, also, emphasizes the importance of having expert as-

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sistance called in at the earliest moment, and not, as is too often the case, having the expert employed only shortly before the trial, in this way severely handicapping the expert in his investigation.

The cases described cover several of strangulation involving the examination of fibers, not only as to their identity, but questions as to whether they have been cut or torn; also, questions of stabbing, assault, gunshot wounds, incendiary, counterfeiting, poisons, covering cases of strychnine, arsenic, arsenuretted hydrogen, phosphorus, mercuric chloride, nitro-benzol, amines, heroin, narcotin, lysol, alcohol and naphthalin.

The book is profusely illustrated with excellent photographs, showing scenes of crimes, cords cut and torn, imprints of teeth, bodies of victims, various types of blood stains, finger prints, holes in fabrics made by gun shots, photomicrographs of hair, finger prints, foot prints, and numerous examples of forgeries, etc., a considerable portion of the book being devoted to the last subject. As a whole, the little volume is a valuable addition to the library of those interested in criminal investigations.

JOSEPH A. DEGHUEE.

New York City.

SOZIALE FÜRSORGETÄTIGKEIT IN DEN VEREINIGTEN STAATEN. Reiseskizzen, by *Elsa von Liszt*. J. Guttentag, Berlin, 1910. Pp. 78.

One reads with pleasure the name of the writer of these twelve brief sketches of American institutions. As the daughter of the well-known Professor Von Liszt of the University of Berlin she may well take an interest in things that make for the betterment of the people. Herself well trained as a student of these subjects, Miss von Liszt must have been able in her crowded three months in this country to see more than many would in three years. She wasted no time while here, nor did she scatter her energies in too wide a field. In a general way she saw the chief institutions of New York, Baltimore, Washington, Cleveland and Boston, with a glimpse at what is going on in Chicago. She saw the best side of everything and was sympathetic in her appreciation. She saw the worst in some places and is considerate in her criticisms. She might have been far more severe than she shows herself in these lucid pages. It would be an excellent thing if more American readers might know some of the vile conditions that Miss von Liszt points out to her own people as existing here. It makes an American wince, for instance, to have it heralded abroad that some of our states are so neglectful of their insane that sick and well, adults and children, men and women, are under the same roof, with the result that half-witted girls occasionally have children whose fathers are drunken good-for-nothings.

The variety of topics in the 78 pages of this little book is surprising and the facts collected and presented show great diligence on the part of this traveler. They include descriptions of Baltimore orphan houses, a Pennsylvania school for the mute, Bryn Mawr College, the "Children's Village," the Bedford Reformatory, the George Junior Republic, a large prison and children's courts. Her criticisms of the juvenile courts correspond with those of most intelligent writers. There is a vast difference in them in the different cities, and there is ample room for improving many.

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The George Junior Republic she found difficult to take seriously. Though that miniature state, its head, the teachers and assistants commanded her admiration, she confesses that the ideas that underlie the experiment are too foreign to Europeans to allow them to be readily accepted. "Perhaps," she says, "without our knowing it, or being really conscious of it, the demand for authority, especially for young people, runs too strongly in our blood." At the same time she was delighted with the feeling of individual responsibility developed there and thought if more of that were introduced into German education it might be useful.

Naturally it was impossible in the compass of such a volume to give full details of so many subjects, but criticism is disarmed, because Miss von Liszt presents her facts and opinions only as the result of a superficial study of these institutions. Her sketches are pleasant reading and the kindly spirit adds to the pleasure. For Germans many things she says may serve as warnings. For Americans they should be spurs to hasten progress in reform.

Croton, N. Y.

ISABEL BARROWS.

CRIMINAL RESPONSIBILITY. By *Charles Mercier*. Oxford: At the Clarendon Press, 1905. Pp. 232.

Seven of the nine chapters of this book are devoted to a psychological discussion of insanity, a necessary study to an adequate understanding of the subjects of criminal responsibility. The author admirably develops that phase of the question, and very successfully adapts it to his purpose in criticising the present system of dealing with insanity.

Following this discussion he analyzes very fairly and justly the famous answers of the judges to the questions set them by the House of Lords in 1843. He then shows the error of many courts, and the injustice arising therefrom in applying these answers to cases of insanity generally, whereas they were specifically limited to a very narrow statement of facts. The closing chapter of the work is devoted to an explanation of the English practice in cases of insanity and to a discussion of the novel plan of examining experts and submitting their united report to the jury rather separately interrogating each on the witness stand.

Urbana, Ill.

HARRY A. VANNEMAN.

PRINZIPIEN EINER STRAFGESETZREFORM. Von *Dr. Johan C. W. Thyren*. J. Guttentag: Berlin, 1910. Pp. 200.

The author of the book is professor criminal law in the University of Lund, Sweden, and it was written at the instance of the Swedish Government, as an introduction to the preliminary draft of the new Swedish Criminal Code. An effort is made to establish the aims which a civilized government should seek to achieve by the imposition of penalties and then to consider what penalties will best subserve that purpose. The author holds that protection to society is the chief object of all penal law. The conduct which in any given era or country is deemed injurious to the social well being is considered wrong and is punished by either law or custom. It may be that the same conduct in another country or era is not considered detrimental to the social

welfare, yet in each instance it is the common opinion of what is good for society, which determines whether the act shall be punished. Thus we find that infanticide, destruction of the sick and aged are not considered dangerous to the welfare of a primitive society suffering from an insufficient food supply, while in other social organizations, more favorably situated, those acts would be severely punished. Many other examples are given by the author, and others will readily occur to the reader, all tending to establish that protection to the social well being is the main, if not the only object, of all penal law.

In his discussion of the penalties which should be imposed, so that this end may be attained, the author analyses the causes and motives which impel persons to perpetrate crimes or transgress the laws, because it is only a thorough consideration of the causes and motives, that we can learn how to so impose the penalty, that it will have the effect of eradicating the evil tendency of the criminal.

The serious motive of the act is not the only thing to consider; it is perhaps of greater importance to consider whether the act was the product of a sudden loss of will power to remain within the law, or whether it was the product of a permanent tendency to violate the law. So the sole crime of one who in sudden anger kills the paramour of his wife is less dangerous to the social well being, than the sufferer who designedly and constantly preys upon his fellowmen. The transgression of the one is acute, that of the other is chronic. The first may never commit another illegal act, the other intends to violate the law at all times. Clearly, if protection to society is the object of penal legislation it should look less to the act committed, than to the mental attitude of which it is the result. Of course, the line between the two classes is not always distinct. The acute tends to become the chronic, and society in protecting itself must so impose its penalties as to prevent the acute from degenerating into the chronic wrongdoer, even while it visits the acute with lighter punishment than the chronic criminal.

The author succinctly describes the development of the modern, the rational viewpoint, that all conduct inimical to the social welfare is to be viewed as a species of ethical disease, which, in at least the greatest number of instances, finds its origin in the environment, in which the malefactor was born and brought up. The ideal treatment would be like the treatment to which one physically ill is subjected by the physician, *i. e.*, careful diagnosis and such a remedy as medical science suggests. This is, however, practically impossible with "ethical diseases."

Modern civilization will not confer upon any court the authority to declare any given act a crime. The very corner-stone of the legislation of every civilized state is the maxim, *Nulla poena sine lege poenali*, and society is thus hampered in diagnosing ethical diseases because it may well happen, and in fact it does happen, that activities, which very seriously injure the well being of large numbers, fall just outside the precise description of what the law declares a crime and so goes unpunished, while an act of far less injurious character, comes within the legal prohibition and is punished. A necessary correlative

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of the doctrine that no penalty shall be imposed on any act not declared a crime by statute, is the principle that within certain limits at least the extent of the penalty must also be fixed, because otherwise the judge might impose very severe penalty for light offenses and vice versa.

The physician treating physical disease is not so hampered. He observes every symptom, and having diagnosed the case prescribes the remedy which he thinks will cure the disease. For the reasons already mentioned ethical disease cannot be so treated. As already said, the acute social activity may fall just outside the description of what is an offense, and so we have what is actually an ethical disease, declared not a crime legally, and therefore not subject to treatment, and even if the examination, the diagnosis brings the acute social activity within the description of some offense against the law, we are hampered in the application of the remedy, because here again the physician—the judge, is controlled by law. He must apply the same treatment to the same offense, whether it be committed by a novice or a chronic criminal. Some discretion it is true is given the judge, but after all it is the same prison though the term of imprisonment is shorter in the one than the other case.

The author fully recognizes the difficulties which exist, and he does not advocate drastic and radical change. He does not undervalue the beneficial results of serious punishment for serious offenses as a deterrent to others not to imitate the criminal conduct of the one found guilty; but while he appreciates all these things and does not advocate drastic reforms, he advises that the main object and purpose of all penal law should be kept distinctly in mind, so that every reform adopted should be in the direction of the ideal penal system. He considers the various methods which might be adopted. He treats pecuniary penalties, the brief terms of imprisonment, the longer terms, solitary and common confinement, open air employment and other employment for prisoners, and makes valuable suggestions how much may be accomplished by an intelligent imposition of the respective penalties, always keeping in view the deterrent effect of the penalty on others, the effect of the penalty as a preventive of anti-social conduct, *i. e.*, conduct injurious to society, and the influence of the penalty on the character and disposition of the offender.

He points out that unless the pecuniary penalties imposed are measured by the financial ability to pay them, they fail of their purpose. A fine of a dollar means much more to one who has but little except his capacity to labor in some manual employment, than a fine of a thousand dollars to a millionaire. The apparent incongruity of the result which would be reached by a strict adherence to the theory, that pecuniary fines should be proportioned to the financial means of the offender, has no terrors for the author, and his argument in support is strong and convincing.

The author is anxious to obtain for the discharged prisoner assistance as well as surveillance. He finds the most dangerous period for a relapse of the discharged man is in the first two or three years of his freedom. If he can be assisted over that period and placed in a position

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to make use of the trade or occupation that has been taught him during imprisonment, the probability that he will again become an offender is, if not altogether destroyed, at least very much lessened, except perhaps where the offender is a chronic criminal, with abnormal tendencies which cannot be cured.

The book will repay a careful reading by every one and it should certainly be studied by every one who is concerned with the enactment of penal legislation.

New Orleans, La.

SOLOMON WOLFF.

DIE KURZE FREIHEITSSTRAFE. By *Dr. Paul Heilborn.* Leipzig: Verlag Von Wilhelm Engelmann, 1908. Pp. 91.

In this rather thorough discussion Dr. Heilborn offers a contribution to the perplexed problem of the petty offender. As such it is of special value to Americans, who have been enjoined to give more attention to this question. The short imprisonment as defined by the author is limited to three months, or less. Notwithstanding various objections to short imprisonment, given in the active discussion of the subject during the past twenty-five years, it is held to be, at least a necessary evil. Statistics on the subject, even in European countries, are conclusive. It is said that first offenders always relapse. Yet 56 per cent of the commitments continue to be first offenders. What the statistics do not tell us, is as to the cause of criminality, and the reasons for relapses.

The writer gives the pro and con discussion between European experts as to the character of short imprisonment. Many hold that it should be solitary confinement. This, to prevent the first offender from being contaminated by the repeater. In the words of Dr. Heilborn: "To save the first offender from further corruption is a task so great and serious that one should not experiment with it." Serious objection is presented against solitary confinement, not only on grounds of health, but more particularly because it tends to morbidity. It has been opposed especially by von Liszt and Rosenfeld. Still another difficulty in the way of an ideal classification of prisoners is found in the question of industry. Prisoners, even on short sentence, should have work, but there are few things of value that can be done single-handed.

The real value of imprisonment should not be considered alone from its effect upon the imprisoned. "But the question is, how many crimes are not committed on account of the punishment which is sure to follow? This question can not be answered off-hand." This reference to the deterrent effect of imprisonment is followed by a discussion of the various objects of imprisonment. A question is raised as to whether the desire to satisfy the public indignation because of offenses committed should be considered as one legitimate object. "Imprisonment may satisfy the objects of the police, but not the object of punishment." Thus numerous reasons for imprisonment are given besides the reformation of the offender. Equivalents for imprisonment are considered a makeshift. Aside from the fine, however, as such a substitute, the most recent movement for suspension of sentence and probation is given extended consideration. Such suspension of sentence may be the suspension

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of either a fine or imprisonment. The conditions of probation may include the payment of the fine while under probation, or the payment of the court costs. In any case the payment should be required in installments, so that the poor working man will be able to meet the obligation.

The point of discussion at present, according to von Liszt, lies between general and special prevention. The short sentence, discussed by Dr. Heilborn, and as generally practiced, may accomplish the first. Human interest and individual treatment must increase to secure special prevention.

Chicago.

F. EMORY LYON.

OUTDOOR LABOR FOR CONVICTS. A REPORT TO THE GOVERNOR OF ILLINOIS. By *Charles Richmond Henderson*. University of Chicago Press, Chicago, 1907. Pp. IV, 154.

This work, as the subtitle indicates, is in the form of a report to the Governor of Illinois, by Prof. C. R. Henderson of the University of Chicago. The subject dealt with, outdoor labor for convicts, is one of vital concern to students of our criminal institutions and to those responsible for their administration, and as this book presents the experience of many foreign countries in their attempts to solve the problem of convict labor, it can not fail to serve a very useful purpose.

Most of the material consists of translations of the discussions on the subject of outdoor prison labor, presented by the delegates of the various countries to the International Prison Congress held in Budapest in 1905. As the author says in his introduction, "Probably no such a collection of opinions, facts and arguments on this problem was ever before brought together, and the experiences described are fresh and living." Among the most interesting of the foreign reports is that by O. Kellerhals, director of the Penal Agricultural Colony of Witzwil, Bern, Switzerland, where two thousand acres of swamp lands have been reclaimed by convict labor and converted into what is described as an almost ideal farm colony. The men are worked in small squads of ten or a dozen, under the supervision of two guards, who are not mere overseers and taskmasters but work along shoulder to shoulder with the men. The mental, moral and physical welfare of the prisoners is carefully looked after and employment is always secured before the prisoners are discharged.

Probably the most valuable part of the report, however, is the introductory chapter, in which Professor Henderson presents in a few pages the results of his own observations and study of the question of outdoor prison labor. Some of the arguments in favor of such labor are: (1) it conduces to the health of the prisoner, where the amount and character of the labor is not excessive; (2) it is usually reasonably profitable to the state, highly so in many of the Southern States, where cotton and cane growing are carried on on a large scale; (3) it brings the convict into competition with free labor less than is true of most kinds of prison labor, and (4) it provides the convict with knowledge of an occupation in which it is usually easy for him to find employment after he has been released. On the other hand, there are serious

objections to many forms of outdoor labor. Work on streets and public highways brings the convicts into contact with the public and increases the possibilities of escape. This necessitates the chaining of the prisoners and the arming of the guards, and necessarily results in the hardening of the criminal and the lowering of the moral tone of the community. Outdoor labor on plantations and highways yields itself but poorly to the introduction of any sort of trades teaching, education or other reformatory agencies, and there is everywhere seen a tendency on the part of managers to commercialize the prisons, to strive for the tangible material results that look well in an annual report, rather than for the intellectual and moral regeneration of the prisoners, results that are not so manifest but are vastly more important to society. Then, too, a very large per cent of the convict class comes from the cities and towns and will return to these centers upon their release from prison, and as a consequence little that they have learned upon the state farms or public highways will be of use to them in earning an honest living. Climatic conditions are also an important factor, for the severe winters in our Northern States make outdoor labor impractical for several months in the year.

However, farm colonies are strongly recommended for the "large class of low-bred, degenerate, alcoholic 'rounders' who are now required to serve short sentences for drunkenness or disorder, and who are made worse by the irrational treatment given them under present laws. . . . To make them over morally, they must be kept from the possibility of getting alcohol and drugs, and sensual gratification for at least three years, though some can be cured in less time and some can never be cured."

University of Texas.

CHARLES S. POTTS.

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